

DETAILED ACTION

This office action is in response to applicant's response filed on 11/20/2009.

Applicant's arguments have been considered, but not found persuasive. The rejection of claims 18-20, 25, 27-33, 35, 36 under 35 U.S.C. 102(b) as being anticipated by Beutler et al. (US 4,808,388, PTO-1449) is MAINTAINED. See under response to arguments.

Applicant's arguments have been considered, but not found persuasive. The rejection of claims 21-23, and 34 under 35 U.S.C. 103(a) as being unpatentable over Beutler et al. is MAINTAINED. See under response to arguments.

Applicant's arguments have been considered, but not found persuasive. The rejection of claims under 35 U.S.C. 103(a) as being unpatentable over Bellon et al. (FR 2,789,397 with English translation of record) is MAINTAINED. See under response to arguments.

Applicant's arguments have been considered, and found persuasive. The rejection of claims 26-27, 32, 37, 45 under 35 U.S.C. 102(b) as being anticipated by Penska et al. (EP 0 938 890 or US 5,851,544, PTO-1449, IDS filed on 06/20/2006) is herein withdrawn..

Applicant's arguments have been considered, but not found persuasive. The rejection of claims 18-20, 24-25, 28, 30-31, 33-36, 44 under 35 U.S.C. 102(b) as being anticipated by Penska et al. (EP 0 938 890 or US 5,851,544, PTO-1449, IDS filed on 06/20/2006) is MAINTAINED. See under response to arguments.

Applicant's arguments have been considered, but not found persuasive. The rejection of Claims 21-23, 29, 38-39, 40-41 under 35 U.S.C. 103(a) as being unpatentable over Penska (EP 0 938 890 or 5,851,544) is MAINTAINED. See under response to arguments.

Currently, claims 18-41, and 44-45 are pending in this application, and examined herein.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18-20, 25, 27-33, 35, 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Beutler et al. (US 4,808,388, PTO-1449).

Beutler et al. discloses foamable cosmetic creams for application onto the skin, comprising oil-in-water emulsion. The composition or preparation therein comprises 2 to 9 % by weight of emulsifying agent such as PEG glyceryl stearate, PEG 9-stearate, cetareth-12 (PEG-12-cetyl stearyl ether), and mixtures thereof; 0.5 to 4.5 % by weight of consistency-providing agent, a combination of cetearyl alcohol and stearic acid; 4.5 to 21 % by weight of oil portion selected from fatty substances such as vegetable and mineral oil, liquid fatty alcohols, and liquid waxes; and gases such as N₂O, CO₂. See column 2, lines 3-10; lines 28-50. A composition comprising 2.0 % by weight of

cetareth-12 (PEG-12-cetyl stearyl ether), 1.0 % by weight of cetearyl alcohol, and 2.5 % by weight of stearic acid, and 2 to 3.2 % by weight of a gas such as N₂O, CO₂ is disclosed. See Example 7/2; column 20, claims 1-4. The composition therein comprises a total of 2.5 % to 13.5 % by weight of polyethoxylated fatty acid esters, cetearyl alcohol, and stearic acid. A method of preparing said compositions is also taught. Beutler et al. in Example 5/1a and Example 5/1b also discloses a composition comprising 5 % by weight of TEA-Stearate (Triethanolamine Stearate) i.e wholly or partially neutralized fatty acid instant emulsifier A, 0.5 % by weight of polysorbate 20 (PEG 20 sorbitan monolaurate) i.e instant emulsifier B, 1% by weight of cetyl alcohol i.e instant emulsifier C, lanolin alcohol, 0.25 % of sodium Laureth sulphate, and N₂O or CO₂ as the gas. The total concentration of emulsifiers A to C in Examples 5/1a and 5/1b is between 2 % to 20 % by weight, which meets the instant claims. See Examples 5/1a and Example 5/1b, Example 6/1column 13-14. The amount of the gaseous propellant is about 1 to 4 % by weight. See column 4, lines 34-44.

Thus, Beutler et al. anticipates instant Claims 18-20, 25, 27, 28-33, 35, 36.

Response to Arguments

Applicant's arguments have been considered, but not found persuasive.

Applicant argues that "that the Examiner has failed to point to a single specific composition of BEUTLER which can be considered to be encompassed by any of the rejected claims. " These arguments have been considered, but not found persuasive because Beutler et al. in Example 5/1a and Example 5/1b discloses a composition comprising 5 % by weight of TEA-Stearate (Triethanolamine Stearate)

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i.e wholly or partially neutralized fatty acid instant emulsifier A, 0.5 % by weight of polysorbate 20 (PEG 20 sorbitan monolaurate) i.e instant emulsifier B, 1% by weight of cetyl alcohol i.e instant emulsifier C, lanolin alcohol, 0.25 % of sodium Laureth sulphate, and N20 or CO2 as the gas. The total concentration of emulsifiers A to C in Examples 5/1a and 5/1b is between 2 % to 20 % by weight, which meets the instant claims.

Applicant argues that "While sorbitan monolaurate is an ester of a fatty acid (lauric acid) and sorbitan, it clearly is neither polyethoxylated nor an ester of polyethylene glycol and lauric acid." These arguments have been considered, but not found persuasive because polysorbate 20 (PEG 20 sorbitan monolaurate) employed in the compositions disclosed by Beutler et al. is polyoxyethylene (20) sorbitan monolaurate which is a polyethoxylated fatty acid ester, and meets the instant emulsifier B.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 21-23, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beutler et al. as applied to claims 18-20, 25, 27, 28-33, 35, 36 above.

Beutler et al. is applied as discussed above.

Beutler et al. do not expressly disclose the particular ratios of a, b, c as in claims 21-23, and the amount of gas as between 10 % to 90 % by volume.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to optimize the amounts of a, b, and c. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to optimize the the amount of gas.

The optimization of the ratio of a:b:c, and the amount of gas based on the prior art teachings, is considered well within conventional skills in cosmetic science, involving merely routine skill in the art.

It has been held that it is within the skill in the art to select optimal parameters, such as amounts of ingredients, in a composition in order to achieve a beneficial effect. See *In re Boesch*, 205 USPQ 215 (CCPA 1980).

Response to Arguments

Applicant's arguments have been considered, but not found persuasive as discussed above in the rejection and those found below.

Beutler et al. in Example 5/la and Example 5/lb discloses a composition comprising 5 % by weight of TEA-Stearate (Triethanolamine Stearate) i.e wholly or

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partially neutralized fatty acid instant emulsifier A, 0.5 % by weight of polysorbate 20 (PEG 20 sorbitan monolaurate) i.e instant emulsifier polyethoxylated fatty acid ester B, and 1% by weight of cetyl alcohol i.e instant emulsifier C, and N20 or CO2 as the gas. The total concentration of emulsifiers A to C in Examples 5/la and 5/lb is between 2 % to 20 % by weight, which meets the instant claims. See Examples 5/la and Example 5/lb, column 13-14. Thus, Beutler et al. clearly anticipates instant claims 18-20, 25, 27, 28-33, 35, 36.

The optimization of the ratio of a:b:c, and the amount of gas based on the prior art teachings, is considered well within conventional skills in cosmetic science, involving merely routine skill in the art.

It has been held that it is within the skill in the art to select optimal parameters, such as amounts of ingredients, in a composition in order to achieve a beneficial effect. See *In re Boesch*, 205 USPQ 215 (CCPA 1980).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-24, 28-31, 34, 36-39, 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellon et al. (FR 2,789,397 with English translation of record).

Bellon et al. exemplify a facial foam composition or preparation comprising 22% PEG-100 stearate/glyceryl stearate combination from SEPPIC which is a polyethoxylated fatty acid ester in the instant claim 18 (I)-B: stearate having a chain 18 carbons and 100 of ethoxylation; 12% stearic acid which is a fatty acid in the instant claim 18 (I)-A: stearic acid having a chain 18 carbons; 6% octyldodecanol, which is a fatty alcohol in the instant claim 1 (I)-C having a chain 20 carbons; nitrogen added to the composition in 70% by volume which is one gas in claim 18 (II). See Example 1 and Table 1 (at page 10-11 and 16 of the English translation). The claims therein recite a method of caring for skin comprising applying the composition to the skin. Bellon et al. disclose that the lipid phase in Example 1 which is phase A, is 40.7% of total weight which is obtained from the sum total of phase A (see page 11). Fatty acids such as stearic acid, myristic acid, acids of lauric, cetyl, palmitic, oleic are taught. It is also taught that lipophilic phase that includes the fatty acids represent 30 % of the lipophilic mass, and this lipophilic phase represents 5 % to 25 % by weight of the total composition. See page 5 of the English translation. A gas such as air, nitrogen in the amount of 10 to 90 % by volume of the composition is taught. See page 5 of the English translation. The compositions therein possess properties such as light appearance, good spreading power, quick penetration during use, non-greasy and non-sticky sensation to the skin after application. See page 4 of the English translation. The compositions therein can comprise additional emulsifiers such as for example glycerol

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stearate. See page 13, Example 2. See Example 3, wherein PEG-7 glycerylcocoate is present in an amount of 2.0 %.

Bellon et al. lacks a specific exemplification, wherein the total amount of emulsifiers A, B, and C is from 2 % to 20 % by weight as in claims 18; from 5 % to 15 % as in claims 28 and 37; and from 8 % to 13 % by weight as in claim 29. Bellon et al. do not expressly disclose a ratio of a:b:c of 1:1:1.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to optimize the total amounts of a, b, and c, and a ratio of a:b:c of 1:1:1.

It would have been obvious to a person of ordinary skill in the art at the time of invention was made to exemplify a composition wherein the total amount of emulsifiers A, B, and C is from 2 % to 20 % by weight as in claims 18; from 5 % to 15 % as in claims 28 and 37; from 8 % to 13 % by weight as in claim 29, using the teachings of Bellon et al. with the expectation of achieving a cosmetically acceptable form of a foam that has a light texture and does not leave a residual greasy or sticky film.

Moreover, the optimization of the ratio of a:b:c based on the prior art teachings, is considered well within conventional skills in pharmaceutical science, involving merely routine skill in the art.

It has been held that it is within the skill in the art to select optimal parameters, such as amounts of ingredients, in a composition in order to achieve a beneficial effect. See *In re Boesch*, 205 USPQ 215 (CCPA 1980).

The recitation “wherein the preparation comprises up to 30 % by weight, based on a total weight of the preparation, of a lipid phase comprising one or more nonpolar liquids”, and “wherein the preparation comprises up to 40 % by weight, based on a total weight of the preparation, of a lipid phase, of polar liquids” in claims 19-20 reads on 0 % weight of nonpolar liquids, and polar liquids.

Response to Arguments

Applicant’s arguments have been considered, but not found persuasive as discussed in the previous office actions and those found below.

Applicant’s arguments regarding PEG-100 stearate glyceryl stearate in Example 1 of BELLON (marketed by SEPPIC Company as glyceryl stearate and PEG-100 stearate) has been considered, it is pointed out again PEG-100 stearate/glyceryl stearate from SEPPIC contains an ester of stearic acid and polyethylene glycol, PEG-100 refers to polyethylene glycol comprising 100 ethylene glycol units. Thus, PEG-100 stearate glyceryl stearate taught by BELLON in Example 1 reads on instant emulsifier B which is a polyethoxylated fatty acid ester.

Applicant’s arguments with respect to decylglucoside have been considered, and found persuasive. But, it is pointed out that Bellon et al. also teach alcohols such as octyldodecanol which meet instant fatty acid alcohols. Bellon et al. teach that lipophilic phase that includes the fatty acids represents 5 % to 25 % by weight of the total composition. Bellon et al. exemplify a facial foam composition or preparation comprising 22% non-ionic emulsifier, PEG-100 stearate/glyceryl stearate which is a polyethoxylated fatty acid ester, 12% stearic acid which is a fatty acid, 6% octyldodecanol. Bellon et al.

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in addition to the face care foam in Example 1, Bellon also discloses shaving foam in Example 3 comprising 12.00 % by weight of stearic acid i.e instant emulsifier A, 2.0 % by weight of non-ionic emulsifier, PEG-7 glycerylcocoate i.e instant emulsifier B, 4.0 % by weight of decylglucoside, and nitrogen. It is pointed out that Bellon et al. disclose a substantially similar emulsifier system to the one claimed herein having all three essential ingredients. As shown by the Examples in Bellon the amounts of A, B, and C can be varied to obtain the desired benefits. Thus, it would have been obvious to a person of ordinary skill in the art at the time of invention was made to exemplify a composition wherein the total amount of emulsifiers A, B, and C is from 5 % to 15 % as in claims 28 and 37; from 8 % to 13 % by weight as in claim 29, because Bellon et al, teach that lipophilic phase that includes the fatty acids represents preferably from 5 % to 25 % by weight of the total composition. Thus, there is clear motivation to optimize parameters such as A, B, and C to obtain the composition with beneficial properties.

Further, the concentration of each individual emulsifier, and the total concentration by weight of all three emulsifiers in the compositions of Bellon et al., these parameters are considered to be result effective variable that would have been routinely optimized by one of ordinary skill in the art at the time of invention was made with the expectation of achieving a cosmetically acceptable form of a foam that has a light texture and does not leave a residual greasy or sticky film. Accordingly, it would have been obvious to a person of ordinary skill in the art at the time of invention was made to manipulate the concentration of emulsifiers based on the fact that these parameters are recognized as

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result effective and would have been routinely optimized to obtain a cosmetically acceptable form of a foam.

Finally, it is pointed out that the optimization of the amounts of the emulsifiers in a cosmetic composition, is considered well within conventional skills in cosmetic science, involving merely routine skill in the art. It has been held that it is within the skill in the art to select optimal parameters, such as amounts of ingredients for example emulsifiers, in a composition in order to achieve a beneficial effect. See *In re Boesch*, 205 USPQ 215 (CCPA 1980).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-27, 32, 33, 40, 41, 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellon et al. as applied to claims 18-24, 28-31, 34, 36-39, 44 above, and further in view of Synder (4,708,813).

Bellon et al. is applied as discussed above.

The reference lacks a hydrophilic emulsifier.

Bellon et al. does not teach the particular alcohols such as cetyl alcohol, and stearyl alcohol in the composition therein.

Synder teaches a nonlathering cleansing mousse with skin conditioning benefits. Sorbitan monostearate is taught as a surfactant that provides skin cleansing benefits and imparts a uniform dispersion of emollient and other ingredients in the composition. Surfactants are disclosed as comprising 1.5-15% of the composition. See abstract; Col. 4, line 26-Co1. 5, line 24. Fatty alcohol foam modifiers, which are C12-C22 saturated chain fatty alcohols, for example cetyl alcohol, stearyl alcohol, lauryl alcohol, and mixtures thereof are taught. It is taught that these fatty alcohol enhance the stability of the mousse, and provide emollient effect on the skin. The fatty alcohols are present in an amount of 1 % to about 4 % in the composition. See column 3, lines 30-45.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the sorbitan monostearate of Synder to the composition of Bellone et al. because of the expectation of achieving a composition with greater skin cleansing benefits and which imparts uniformity to the emulsion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ fatty alcohols such as cetyl alcohol, stearyl alcohol in the composition of Bellone et al.

One of ordinary skill in the art would have been motivated to employ cetyl alcohol, stearyl alcohol as fatty alcohols with the expectation of obtaining a stable composition which provides emollient effect on the skin as taught by Synder.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bellone et al. as applied to claims 18-24, 28-31, 34, 36, 37-39, 44 above, in view of Saint-Leger et al. (5,939,077).

Bellone et al. is applied as discussed above. The reference lacks carbon dioxide.

Saint-Leger et al. teach cosmetic compositions. Carbon dioxide and nitrogen are taught as interchangeable gases that are used in producing cosmetic foams. See Col. 4, lines 7-15.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the nitrogen of Bellone et al. for carbon dioxide because Saint-Leger et al. teach carbon dioxide and nitrogen as equivalent gases for use in producing cosmetic foams.

Response to Arguments

Applicant's arguments have been considered, but not found persuasive.

Applicant argues that "sorbitan and sorbitol are apparently not the same." In response, it is pointed out that Snyder's reference was employed for its teachings that fatty acids of sorbitol or dehydration products of sorbitol such as sorbitan are employed as surfactants in the compositions of Snyder. See column 5, lines 53-61 of Snyder, wherein is taught that fatty acid esters of sorbitol or sorbitan are employed in as surfactants. Thus, the surfactants taught by Snyder meet the broad recitation of hydrophilic emulsifiers in instant claims 25, 40, and also the narrow limitation i.e fatty acids esters of sorbitol as in instant claims 26 and 41. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the sorbitan

monostearate or fatty acid esters of sorbitol of Synder to the composition of Bellone et al. because of the expectation of achieving a composition with greater skin cleansing benefits and which imparts uniformity to the emulsion.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18-20, 24-25, 28, 30-31, 33-36, 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Penska et al. (EP 0 938 890 or US 5,851,544, PTO-1449, IDS filed on 06/20/2006).

Penska et al. discloses skin care compositions containing a liquid, inert, hydrofluorocarbon infused with carbon dioxide. The compositions therein comprise 3 % by weight of stearic acid, 0.5 % by weight of cetyl alcohol, 0.5 % by weight of peg-100 stearate. See paragraphs [0016], [0019], [0072] to [0073], EXAMPLES 6-7. The method of preparing said compositions is also disclosed. Suitable fatty acids and alcohols include compounds having 10 to 20 carbon atoms such as cetyl, myristyl, palmitic and stearyl alcohols and acids. See paragraph [0028]-[0031]. Penska et al. et al. discloses that the emollients may range from 0.5 to 50 % by weight of the total composition.

Penska discloses it is advantageous to infuse the fluorocarbon prior to its incorporation in a final composition due to the easier carbonation when bubbling through a low viscosity fluid rather than through a more viscous final composition. To maximize carbon dioxide delivery, infusion of carbon dioxide is done preferably until the fluorocarbon is totally saturated with carbon dioxide. The fluorocarbon in the inventive composition carries typically 50% to 250%, preferably from 100 to 250%, most preferably from 140 to 250% its volume in carbon dioxide at 37 C. See paragraph [0019].

Example 6 comprises 50% perfluorodecane infused with carbon dioxide; 0.2% xanthan gum (hydrocolloid); 1% titanium dioxide; 3% stearic acid (A); 0.5% cetyl alcohol (C); tocopherol (antioxidant); 0.5% sodium PCA (humectant moisturizer); 0.5% glyceryl stearate (hydrophilic surfactant), and 0.5% PEG-100 stearate (B); among other components. Note using the lower 50% of carbon dioxide infused in the fluorocarbon, the weight percent of carbon dioxide in the composition is 12.5%.

Example 7 discloses 30% perfluorotributylamine infused with carbon dioxide; 0.5% hydroxyethylcellulose (hydrocolloid); 3% isostearic acid; 0.5% cetyl alcohol; 1% glycerin (moisturizer); 1% PEG-40 stearate; 1% sorbitan stearate, and 1% PEG-100 stearate; 2% petrolatum; 1% sorbitan stearate (instant hydrophilic emulsifier); and 5% isopropyl palmitate (ii); among other components.

Thus, Penkas et al. anticipates instant claims 18-20, 24-25, 28, 30-31, 33-36, 44.

Response to Arguments

Applicant's arguments have been considered, but not found persuasive.

Applicant argues that "If a foam were to be present, the carbon dioxide would apparently have to be used in amounts which exceed the saturation concentration thereof in the liquid hydrocarbon." These arguments have been considered, but not found persuasive because Example 6 in Penkas et al. discloses the same amount of carbon dioxide as in instant claim 18, and thus meets the instant claim 18 limitation. In Example 6, 50 wt % of perfluorodecane corresponds to 28.25 % by volume of perfluorodecane. Using the lower 50% of carbon dioxide infused in the 28.25 % by volume fluorocarbon, the percent of carbon dioxide in the composition is 14 % by volume at 37 °C i.e it meets the instant 1 % to 90 % volume limitation in claim 18. The recitation "self-foaming and/or foam-like" is the property of the composition. Penkas et al. discloses the same composition as in instant claim 18, and thus properties such as "self-foaming and/or foam-like" are possessed by the composition disclosed by Penkas et al.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-23, 29, 38-39, 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Penska (EP 0 938 890 or 5,851,544) as applied to claims 18-20, 24-25, 28, 30-31, 33-36, 44 above.

Penska et al. is applied as discussed above.

Penska et al. lacks a specific exemplification, wherein the total amount of emulsifiers A, B, and C is from 8 % to 13 % by weight as in claim 29.

Penska does not exemplify the instant particular ratios of a, b, c.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the instant ratio since Penska teaches the general range of each component (a) to (c) wherein the oily material including the fatty acids (a) and fatty alcohols (c) may be used in an amount of 5-50%. Therefore, it is within the skill of an artisan to optimize these ratios of the (a) to (c) to yield the appropriate emulsion stability and prevent phase separation. "The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages.". In re Hoeschele, 406 F.2d 1403, 160 USPQ 809(CCPA 1969).

Response to Arguments

Applicant's arguments have been considered, but not found persuasive as discussed above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the instant ratio since Penska teaches the general range

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of each component (a) to (c) wherein the oily material including the fatty acids (a) and fatty alcohols (c) may be used in an amount of 5-50%. "The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages.". In re Hoeschele, 406 F.2d 1403, 160 USPQ 809(CCPA 1969).

Conclusion

No claims are allowed.

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period, will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shobha Kantamneni whose telephone number is 571-272-2930. The examiner can normally be reached on Monday-Friday, 8am-4pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, Ph.D can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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